An Investigation into the Licensing of the Knight Street Pub

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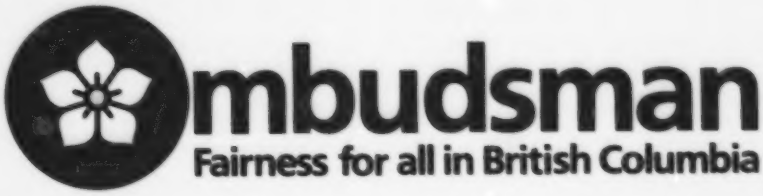

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AN INVESTIGATION

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KNIGHT STREET PUB

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AN INVESTIGATION INTO THE LICENSING OF THE KNIGHT STREET PUB

1. INTRODUCTION

On May 10, 1988 the Ministry of Labour and Consumer Affairs issued a "D" Neighbourhood Public Licence to V.A. Boyd Ltd., the owner of the Knight Street Pub. Valerie Ann McRobbie is the sole shareholder of V.A. Boyd Ltd. On that same day, the Honourable Lyall Hanson, Minister of Labour and Consumer Affairs, received allegations that the referendum for the Knight Street Pub conducted by Delta Media Services Ltd., between April 21 and May 22, 1987, had been improperly conducted. The Minister then instructed his deputy, Mr. Lee Doney, to investigate the allegations thoroughly.

On June 6, 1988, Mr. Doney submitted the findings of his investigation to the Minister. The report, "An Investigation into the Referendum for the Knight Street Pub", was made public the same day.

On May 14, 1988, the Ombudsman's office had received a copy of a letter of complaint sent to the Minister concerning the referendum. On May 20, 1988, Mr. Doney had contacted the Ombudsman, Mr. Stephen Owen, and invited the Ombudsman to review the Ministry's investigation which was currently underway. Subsequent to the release of the report, the office received additional complaints about the referendum itself and also about the Ministry's investigation.

An Ombudsman Officer was present in Mr. Hanson's office the morning of June 6, 1988 when Mr. Doney briefed the Minister on the report. Also present were the Executive Assistant to the Minister, a lawyer from the Legal Services Branch of the Ministry of Attorney General, the Deputy Minister, and Mr. Bert Hick, the General Manager of the Liquor Control and Licensing Branch. The Ombudsman commenced a formal investigation on that day.

2.PROCESS OF OMBUDSMAN INVESTIGATION

The Ombudsman investigation began with a review of the Ministry's report. Documents (i.e. the ballots and the referendum report, with appendices) submitted to the Ministry by Delta Media Services Ltd. (DMS) were obtained as was material directly from DMS. After these documents had been examined in depth, interviews were conducted with people whom were thought to have relevant information. The focus was the administrative acts and/or omissions of the Ministry both in the licensing process of the Knight Street Pub and in the course of its internal investigation of complaints alleging improprieties in the conduct of the referendum. However, in order to consider the Ministry's role, it was necessary to review not only the Ministry's actions but also the conduct of the referendum itself.

Many individuals inside and outside of government have been interviewed in the course of this investigation. For the most part, the information taken from those interviewed is not contradictory. Where contradictions do occur, they are pointed out in this report. All information upon which conclusions and recommendations are based is set out in this report. Those who could be

adversely affected by this report, including the owner of the pub, the owner and former employees of DMS and several past and present government officials have been given an opportunity to review and make representations on a confidential draft. All representations received were carefully considered before the report was finalized.

On July 13, 1988, the Ombudsman, by letter, notified the Honourable Lyall Hanson of certain information which had come to his attention during the course of the investigation which reflected on the validity of the referendum result. No recommendation was made at that time by the Ombudsman as the investigation was still underway. Matters of an apparent criminal nature were also referred to the Ministry of Attorney General and the R.C.M.P. for further investigation. Subsequently, all original material held by this office was requested by, and handed over to, the R.C.M.P.

This report deals with widespread concern over the fairness of government licensing and the public voting process. These are not matters of political policy but rather go to the heart of fair and accountable administrative practices. Because of their importance, this report is being made public at this time under

section 30(2) of the Ombudsman Act. It is possible that further information may yet come to light which is relevant to these findings. If warranted, an addendum to this report will be issued in the future.

3. THE LICENSING PROCESS

Section 5(a) of the Liquor Control and Licensing Act authorizes the general manager of the Liquor Control and Licensing Branch to "grant, transfer, suspend or cancel licences as provided by this Act and the regulations". Section 5(f) enables the general manager to authorize officials to issue licences. Regulation 17(4)(i) of the Liquor Control and Licensing Regulations requires that a referendum or petition be held within a 6 block or 1/2 mile radius of the proposed establishment before a neighbourhood pub licence can be issued. Pursuant to an agreement between the Branch and the City of Vancouver, referendums in that city are within a 2000 foot radius of the proposed site. Section 10(3.1) of the Act states that "a referendum may be carried out in a manner required by the general manager" and section 10(3) makes it clear that 60% of the residents must favour granting the licence for the application to proceed.

The licensing process for a neighbourhood pub is a lengthy one. The first stage involves an applicant submitting the proposed site to the Branch for approval. Three things are required: (1) written evidence that the applicant owns a valid interest in the property (e.g. a deed, lease, option or interim agreement); (2) a letter from municipal or regional authorities indicating they are prepared to consider a neighbourhood pub at that location (since the fall of 1987, a formal resolution of municipal council has been required); and (3) a document obtained from the Branch which is known as a "Statement of Proposed Owners" (this identifies the applicants and their respective degrees of ownership).

The local inspector then does a site inspection and prepares a report for the deputy general manager for licensing. He then must take into consideration the sections of the Regulations relevant to the licensing of a neighbourhood pub, as follows:

> 5(4) ...the general manager shall consider the following factors in making his decision:
> (a) the proposed location of the establishment;
>
> (b) the proximity of the establishment to other social facilities and public buildings;
>
> (c) the number of licensed establishments within a reasonable distance of the proposed location;

(d) the potential economic viability of the proposal;

(e) the need of the local community for the proposed establishment; and

(f) traffic, noise and parking factors, appearance and municipal zoning.

Section 17(4)

(f) No licensed neighbourhood public house shall be located within one m le of another licensed neighbourhood public house or licensed hotel, except as approved by the general manager;

(g) No licensed neighbourhood public house shall be located within one-half mile of a main or secondary highway, except as approved by the general manager.

If the decision on the application is favourable, the Branch will grant pre-clearance. This is not a guarantee that a licence will subsequently be issued; rather, it is an indication that the proposed site meets the basic requirements of the Branch. If pre-clearance is refused by the Branch, the applicant may appeal to the Minister under section 32(2) of the Act.

If pre-clearance is granted, the applicant then proceeds to the next stage of the process which is third-party approval. Approval of local authorities (whether municipal or regional) must be obtained. Then the

applicant must arrange for an independent firm to conduct a referendum of the residents within a one-half mile radius of the proposed site. Before the official referendum, the applicant may conduct his own survey or pre-canvass of the area to get an indication of the extent of community support.

If the referendum results indicate that at least 60% of those voting are in favour of the proposed pub, and if the Branch approves the results, then the major requirements of the licensing process have been successfully met. The applicant must then obtain approval from health and fire authorities of his detailed floor plans. He then submits the floor plans to the deputy general manager for licensing, whose approval is the authority for the applicant to commence construction.

This investigation has focused on the first two stages of the licensing process: (1) application for pre-clearance, and (2) referendum of the residents.

4. PRE-CLEARANCE (November 1986 - January 1987)

On September 9, 1986, McRobbie wrote the Branch to apply for a neighbourhood pub licence. At this time, Allan Gould was the General Manager and Don Andersen was the Deputy General Manager. She enclosed with her letter the following: (1) statement of proposed owners which showed that McRobbie would own 100% of the pub; (2) a letter from Mr. Peter Toigo, President of Whitbury Holdings, showing intent to lease the site at 7289 Knight Street to McRobbie; and (3) a letter from the Permits and Licences Department of the City of Vancouver that the Director of Planning may approve a neighbourhood public house (NPH).

The site was then inspected by one of the Ministry's local inspectors. He evaluated the site against the requirements of section 5(4) of the regulations. He noted that there was a licensed establishment, The Blue Boy Hotel, located within a one-mile radius of the proposed site. He also commented: "There is little need in the community for a NPH. This is an old established residential area. The residents, particularly those in the immediate area will in all probability object." The inspector noted that both Knight Street and East 57th

Avenue were very busy during rush hour and that noise might be a problem to local residents.

The inspector's report also identified the fact that another application within the one-mile radius of the proposed Knight Street Pub site had been received by the Branch prior to McRobbie's. Ms. Suzan Kochen had submitted an application on August 21, 1986 for a NPH to be located at 6940/42 Victoria Drive (the corner of East 54th and Victoria Drive). The Inspector's report noted that another pub, The Molly Hogan at 1445 East 41st Avenue, was 7/8 of a mile away from Kochen's proposed site. Kochen's proposed site was also 3/4 mile away from a NPH pre-clearance at 2615 E. 49th, which had been extended until November 7, 1986, and 7/8 mile from a pre-clearance refusal which was under appeal at S.E. Marine and Gladstone. The Inspector commented in his report on the Kochen application that "...the need for this facility by the local community would appear to be warrented (sic) providing" the applications at 2615 E. 49th and S.E. Marine and Gladstone did not go ahead. The fact that the Molly Hogan was just within a one-mile radius of Kochen's site did not appear to the Inspector to be a reason for refusing Kochen's application. At that

time, the Branch's practice was to process applications on a "first come - first served" basis. Moreover, it was not unusual for several applications for pre-clearance within one mile of each other to proceed simultaneously.

On November 12, 1986, McRobbie wrote Mr. Don Andersen, the then Deputy General Manager of Licensing, as follows:

> Re: Pub Application
> 57th and Knight Street
>
> I have been informed by Peter Toigo Jr. of Whitbury Holdings Inc. that he has communicated with you regarding the above-mentioned application.
>
> I was disturbed and surprized (sic) to learn that there was a possibility that my application could be turned down due to the fact that another pub site (54th and Victoria Drive) was already being given consideration, whose location is .66 miles from my site.

McRobbie went on to quote section 17(4)(f) of the Regulations and then listed 4 sets of licensed establishments which were less than one mile apart. McRobbie's penultimate sentence was "...further, I understand that the 54th & Victoria location was turned down previously due to inadequate parking, which is not a factor with the 57th & Knight location".

On December 11, 1986, Andersen wrote two letters: one to McRobbie and one to Kochen. Andersen wrote to Kochen that he had some problems with her application. He mentioned that the Branch had two pre-clearance approvals within one mile of her site. He went on to say that he did "feel the site on Marine Drive will go ahead". He also included the statement from McRobbie's November 12 letter that "This particular site was refused previously because of lack of parking".

In his December 11, 1986 letter to McRobbie, Andersen wrote that "This particular site...[i.e. the Kochen site]...did have some positive attributes, but recent negative attributes are such that it will not go ahead, and therefore your site has potential." He went on to say that:

> ...the matter was discussed with Mr. Toigo yesterday and cleared away some obstacles that I am working on at the present time. I would advise you I have some positive feeling toward it but I will not be able to advise you immediately on its acceptability but should be able to do so within a couple of weeks.

While it is difficult to discern the exact meaning of every sentence in these two letters, the purport is clear: McRobbie's application was to proceed while Kochen's was not.

On January 16, 1987, Andersen wrote Kochen and formally refused her application for pre-clearance for the following reasons:

> As I indicated to you, the prime problem I have with this application is that it is within one mile of one approved neighbourhood public house which I feel confident will probably pass the poll...(i.e. the site at S.E. Marine and Gladstone),...as well as one mile of an existing neighbourhood public house, The Molly Hogan. There is also the site at 2615 E. 49th Avenue.
>
> Regulation 17(4)(f) states that only on an exception basis should a neighbourhood public house be located within one mile of an existing "D" class licensed establishment and I consider the one on Marine Drive will serve the same area as you would.

No information concerning the statutory right of appeal was given to the applicant in the letter. Kochen was given information concerning her appeal rights over the telephone by Andersen but after discussing her application with him, Kochen has stated that she felt it would be futile to appeal.

Follow-up of the other applications referred to by Andersen has revealed the following:

(1) Pre-clearance for the 2615 E. 49th Street site was first granted in 1983. After innumerable

extensions, Vancouver City Council on February 25, 1988 decided it was not in favour of a neighbourhood pub at this site;

(2) on April 12, 1988, the general manager of the Branch refused to extend pre-clearance and the application at 2615 East 49th was terminated;

(3) pre-clearance was granted on appeal for the site at S.E. Marine and Gladstone on October 6, 1986; and

(4) the Branch terminated the S.E. Marine and Gladstone application on March 19, 1987 because less than 60% of those who voted in the referendum were in favour of a NPH at that site.

On January 8, 1987, Andersen wrote McRobbie that pre-clearance was given to her application. This was a discretionary decision on his part as Regulation 17(4)(f) states that no licensed NPH shall be located within 1 mile of another NPH or licensed hotel, except as approved by the general manager. The Blue Boy Hotel, which holds two "A" licences representing 342 licensed seats, was within a

mile of McRobbie's proposed site. While this may have been an appropriate exercise of discretion, no reason was given by Andersen to explain his decision; indeed, the fact that it was a discretionary decision was not mentioned. A copy of Andersen's letter, on which was entered the handwritten note signed by Andersen: "Peter, I am pleased to enter this approval. Kind regards", was sent to Mr. Toigo. A blind copy was sent to the Deputy Minister.

When interviewed, Andersen told us that he had known Toigo for some twenty years. On October 15, 1986 Andersen recalled receiving a telephone call from Toigo. Andersen's recollection was that Toigo was quite irate about the fact that pre-clearance had not been granted to McRobbie. Toigo has confirmed that he did have a shouting match over the telephone with Andersen. Toigo's recollection was that Andersen had verbally indicated shortly after McRobbie's application had been received that he did not anticipate any problems with it. When some time had passed and no word of pre-clearance had been received by McRobbie, Toigo telephoned Andersen. When Andersen mentioned a "horrendous problem" (the Kochen application), Toigo said that he "gave Andersen hell"

because he (Toigo) had already purchased the property at East 57th and Knight.

Andersen's first recollection was that Toigo threatened he would have Andersen fired if pre-clearance were not granted. He has subsequently quoted Toigo as saying, "You will be sorry, you have turned me down once too often." Andersen maintained that this threat did not influence him in any way as he had dealt with Toigo in different capacities for many years and this was just Toigo's manner. However, Andersen did speak to the then General Manager, Allan Gould, about Toigo's outburst. Gould told the Ombudsman's office that he subsequently passed on his concerns about Toigo to Mr. David Poole, Principal Secretary to the Premier.

In these circumstances, it is concluded that the pre-clearance practices of the Branch were applied in an unfair manner as between Kochen and McRobbie. It is recommended that Branch practices for considering competing applications within a particular area be clarified, made known to the applicants and consistently applied. It should be noted that a directive from the General Manager dated June 15, 1987 addresses this

concern, but continues to leave discretion with him to vary from the stated procedures.

5. THE REFERENDUM

a. Approval of Delta Media Services, Ltd.(DMS) (January-February 1987)

Once pre-clearance has been granted, the applicant must arrange for an independent firm to conduct a referendum. The firm selected by the applicant must be approved by the Branch. While there is no exclusive list of companies approved by the Branch, since at least 1979 the Branch has maintained a list of firms which have done surveys acceptable to the Branch. It follows that if an applicant selects a firm from the list, approval from the Branch would be virtually automatic. If the applicant selects a firm which has not previously done a referendum, then (according to a Branch circular dated July 3, 1979) the Branch would "like to know something about the firm, its expertise and reputation, as well as an outline for the method they propose to use in conducting the survey". This 1979 circular contains a list of "approved companies". DMS is not on the list.

The first mention in the Ministry's Knight Street Pub file of DMS is a letter from Mr. Charles Giordano, President of DMS, dated March 26, 1987 to Don Andersen. In it, Giordano wrote that:

> My company, Delta Media Services Ltd. will be conducting the neighbourhood survey (plebiscite) for the above noted application beginning April 21, 1987.

By what process did the Branch approve DMS to conduct the referendum? The attempt of this investigation to discover the answer to this seemingly simple question resulted in the following information:

(1) When Giordano was interviewed, he stated that in 1981, he wrote Andersen a short letter about his company as application to be put on the Branch's list of companies approved to conduct referendums. Giordano stated that his company was put on the list and then did one referendum for a Richmond applicant. He then took himself off the list. He stated that he had attempted to have his company put back on the list but was refused because his company was a public relations firm. Giordano said he appealed in

early 1987 by way of a letter to Bert Hick, the General Manager, who subsequently telephoned Giordano to interview him. As a result of this process, his company was again included on the list of approved firms.

(2) A memorandum on the Ministry file from Bert Hick, General Manager, to the Executive Assistant to the Minister, dated May 20, 1988 reads as follows:

> Further to our conversation with the Minister, here is some confidential background, for his info only, on Delta Media.
>
> 1980 Delta Media Services went on list to do referendums.
>
> 1980 Company did referendum for application for a pub at...(won referendum).
>
> 1980 Company requested to go off list because the principle (sic) was teaching journalism full-time at Kwantlan College. Has taught full-time from 1974-1986.
>
> 1985 Company was requested to do a referendum and tried to get back on the list. Was told by Deputy General Manager, Mr. Andersen that he could not as he was not putting "any PR type" firms on the list. This was relayed to me by Mr. Giordano.
>
> Spring 1987 Delta Media Services request to be put back on the list as Mr. Giordano was teaching part-time now. He had left

> the college in the summer of 1986 to work on the Premier's leadership campaign and election.
>
> I discussed the request with Don Andersen who did not voice any strong objections. It was my view that since he had previous experience in a referendum, that other communications consulting firms were on the list and his experience with voting and ballot processes, that there was no reason why he could not be put on the list.

(3) In the first interview with Bert Hick, he stated that his information for this part of the memo had been obtained from Giordano. Hick had not attempted to confirm through efforts of his own or Ministry staff the accuracy of the information.

(4) In the interview with Don Andersen, he stated that at no time had Bert Hick discussed the approval of DMS with him. Andersen maintained that he was simply informed by Hick that DMS was going to be included on the list.

(5) In the second interview with Bert Hick, he stated that he had discussed the addition of DMS to the approved list with Andersen who strongly objected because he considered DMS to be a "PR" firm.

After this discussion Hick was of a mind not to approve DMS. Subsequently, Hick had received a telephone call from Poole. After the usual pleasantries were exchanged, Poole brought the topic around to DMS and stated, "There won't be any problem with DMS going on the list, WILL THERE?" (Emphasis indicated by Hick). Hick maintained that it was clear to him that the senior public servant in the province wanted DMS to be included on the Branch's list of approved companies. Following this call, Hick gave immediate approval for the acceptance of DMS.

(6) In the interview with Poole, he stated that he telephoned Hick after he (Poole) had received a telephone call from Toigo. Poole said that Toigo called him to bring to Poole's attention the fact that Giordano was out of work. Poole asked Hick whether there would be any problem with DMS going on the list. Poole stated that he did not issue a directive to Hick that DMS should be put on the Branch's approved list, and that had he done so, such a call would have constituted interference on the part of his office. Rather, Poole's call

was merely a show of support for a "good guy", an "on-side" guy, which Poole explained meant a Social Credit supporter. Poole acknowledged that he had no personal knowledge of the background or experience of DMS in this type of referendum work. If there had been difficulty from the Branch's point of view with DMS going on the list, Poole said that would have been the end of the matter. He said, however, that he did not know that DMS had already been considered by the Branch to be inappropriate as a polling firm, and that if he had known he would not have pursued the matter. Poole did recognize that such a telephone call from someone in his position might influence the decision-maker but maintained that the decision-maker could still independently come to his own decision. He explained that if he did not respond to political or quasi-political approaches made to him, there would be no reason for the existence of his office. He felt an appropriate response was to contact the relevant administrator and to indicate support from his office for a particular individual or company, and that such a call of support would not

constitute interference. He said that he assumed Hick would understand that the call was in the nature of an inquiry and was not a direction.

Poole stated that he did not recollect any conversations with the Premier concerning the administrative decisions or actions of the Branch, or the officials to whom the Branch reports, as distinct from conversations of matters of a political or public policy nature.

It is the opinion of this office that such a call does constitute inappropriate political interference with administrative decision making. Given Poole's position and its likely impact on administrative decision makers, involvement by him in administrative decision making on political grounds is inappropriate. Whether an individual is "on-side" is an irrelevant consideration as far as the administrative process is concerned.

(7) Review of the Ministry's file involving the 1981 NPH application for which Giordano stated DMS had conducted a referendum revealed the following facts:

(a) The applicant hired DMS to conduct a survey (pre-canvass) before pre-clearance was granted by the Branch. According to a memo on the Branch's file (dated January 21, 1981) "when applicants do this it is typically done in the hope that it will affect our decision on pre-clearance."

(b) The practical effect of the fact that DMS did an unofficial survey (which Giordano reported showed 66.19% in favour) was that the Branch had no authority over the materials used or the manner in which the survey was conducted. Neither the ballots nor any other material was ever submitted to the Branch for its review.

(c) Pre-clearance was refused, and the applicant's appeal to the Minister was disallowed. Subsequently on August 20, 1982, Giordano wrote the Minister and stated:

> My company, Delta Media Services Ltd. has represented..(the applicant) for the past year concerning an application for a licence for a NP to be located at....

Several times in the letter Giordano referred to the applicant as his "client".

(d) In a letter dated August 28, 1982 to the Executive Assistant to the Minister, Giordano again lobbied for a licence to be issued to his "client".

The following conclusions have been reached: (1) DMS never conducted a referendum under the auspices of the Branch; (2) Hick should have known that DMS had never conducted a referendum under the guidelines of the Branch and that DMS had never been on the Branch's approved list; and (3) Hick included DMS on the Branch's approved list as a result of a telephone call from David Poole, and against the advice of his deputy Andersen and his own prior intentions. As such, Hick's approval of DMS to conduct the referendum was based on irrelevant considerations. It is recommended that, in the exercise of administrative responsibilities, the General Manager not allow himself to be influenced by political considerations.

b. Before the Field Work (March-April 21, 1987)

This section and the next two (i.e. c and d) have been compiled as a result of review of referendum materials and interviews and conversations with many people, as indicated.

Giordano hired Barbara Mathisen to help him with the referendum. He had first met her during the 1986 Provincial election campaign and she had been recommended as very competent by a friend of Giordano's. Her role was to be primarily that of field supervisor; specifically, she was to be responsible for hiring the pollsters, training them, preparing their kits and their maps.

Giordano placed a classified ad for pollsters in both the Vancouver Sun and The Province on April 16, 1987. (N.B. This is only 5 days before the polling was to begin on April 21.) Barbara Mathisen's phone number was given as the number for applicants to call. Mathisen also placed an ad on a notice board at the student employment centre at U.B.C. She hired directly three people whom she knew. Before all the

pollsters were hired, she said that she was told by Giordano that he also had one person, Dave Thomson, who would work as a pollster. (Giordano differed on this point, claiming that he thought Thomson had answered the ad in the paper and telephoned Mathisen. Giordano did acknowledge that Thomson telephoned him.)

Mathisen hired 10 people to work as pollsters; with the addition of Thomson and counting Mathisen also, the total was 12. The training of the pollsters took place in the office of Mathisen's father in the West End. This was a convenient location as all pollsters except Thomson lived in Vancouver. The offices of DMS at that time were located in Giordano's house in Tsawwassen. (During the course of the referendum, DMS relocated to Tilbury Park where another business of Giordano's, 'Quick as a Wink', was situated.)

The training session began at approximately 7:30 p.m. and lasted for 2-3 hours. Two pollsters who were unable to attend this meeting had been trained on the weekend by Mathisen. The remaining pollsters, with the exception of Thomson, attended the training

session. (Thomson stated that he arrived at about 10:00 p.m. after everyone except Mathisen had left, but Mathisen emphatically disagrees and has stated that he did not attend at all.) At that meeting the procedure to be followed by the pollsters was outlined. The pollsters were given the material they would need: maps of their assigned sections, blank copies of the Master Enumeration List sheets, identification tags, information sheets, large manilla envelopes in which to put the ballots, "Out-Left Notice" cards, a list of guidelines, and an initial allotment of 200 ballots. Mathisen recorded the ballot numbers given out and said she left it to Giordano to give Thomson all of his supplies. All present signed declarations that they had no personal interest in the outcome of the vote, or in the business of the Knight Street Pub. Thomson said he signed his at Giordano's house. DMS in its report refers to these as "statutory declarations". While the Ministry guidelines do require statutory declarations, the ones submitted by DMS do not comply with section 77 of the Evidence Act and so cannot correctly be called statutory declarations.

The referendum area was divided into twelve smaller areas, 'A' through 'K'. Mathisen did not do any polling. Each of the remaining 11 pollsters was responsible for one area. The twelfth area was split into four parts and polled by four of the pollsters.

Each pollster was responsible for contacting every house in his assigned area. If the residents were at home when the pollster called, their names were to be entered on Master Enumeration List sheets (blank sheets of 8 1/2"x 11" paper with NAME, ADDRESS, TELEPHONE headings across the top). The pollsters had large manilla envelopes in which to carry the completed ballots. At the preference of the residents, addressed and postage-paid envelopes were left so that the ballots could be mailed to DMS. If no one was home, the address was to be entered on the pollster's enumeration sheet and an "OUT-LEFT NOTICE" (OLN) card left. In order to receive ballots, those residents over 19 years would have to enter their names and mail the card to DMS. The card was addressed and the postage was prepaid. There was a notice on the OLN cards that the deadline for receipt at DMS was May 8.

Each pollster was given a map of his area. The map showed individual lots but had no street addresses. The boundary of the area to be polled was clearly indicated. The pollster was responsible for filling in the street address of every house which he polled.

c. The Field Work (April 21-27, 1987)

The field work of the referendum began on Tuesday, April 21 and finished on Monday, April 27, 1987. There was no polling on the Sunday. Only one pollster worked on April 27. The pollsters began about 5:00 p.m. and finished polling at 9:00 p.m. They then met outside a 7-Eleven store at the corner of East 57th and Knight, where they handed over the manilla envelopes containing the ballots to Mathisen or Giordano. Some envelopes were sealed; some were not. Some pollsters put their Master Enumeration Sheets used that evening into the envelopes with the ballots; some did not. Additional supplies were available from Giordano; however, no record was kept of the ballots subsequently issued to pollsters. Ballots not used by one pollster could subsequently be issued to another pollster. Thomson was not present that first

evening. Mathisen remembered expressing her concern about his absence to Giordano.

Mr. John Bauer accompanied Giordano to the 7-Eleven the evening of April 21 and most subsequent evenings. Bauer, a long-time friend of Giordano's, had agreed to assist Giordano with the referendum. He was not actively involved in the field work, but was to be involved in the tabulation of ballots.

All the pollsters except one were finished on Saturday, April 25. This last pollster also worked on Monday, April 27. Mathisen attended at the 7-Eleven every evening except one. Giordano did not attend one evening and Mathisen delivered the ballots to his Tsawwassen home.

After the conclusion of the field work, there were two deadlines: May 8 for the receipt of OLN cards and May 22 for the receipt of ballots. Before the ballots were sent to the residence, Bauer said that the serial numbers on the ballots were recorded at DMS on the OLN card. When the ballots were returned to DMS, they were stapled to the OLN card which the residents

had previously mailed in. Mathisen's only involvement between April 27 - May 22 was to enter all the street addresses from the pollsters' individual maps onto a "master street map" of the entire referendum area. She did this work in her apartment assisted by her fiancee. According to Bauer, his activity during this period was to put ballots received by mail into safe-keeping and to handle the OLN cards. (As DMS had moved from Giordano's home to the 'Quick as a Wink' office, Giordano brought the mail to Tilbury Park for Bauer to deal with.) Giordano described this period from April 27 to May 22 as a "waiting period".

d. After the Field Work (April 8-May 22, 1987)

Giordano, in his report to the Branch at the conclusion of the referendum, wrote: "A total of fourteen (14) enumerators were used to canvass 12 enumerating districts within the referendum area." Mathisen knew of 12 (including herself); she said she had no knowledge whatsoever of any other pollsters. From April 8 to May 22, the two additional pollsters, Deborah Morrison and Vincent Johnstone, were working under the direction of Giordano. Morrison is pub

owner McRobbie's first cousin; Johnstone is Morrison's son. Morrison was interviewed twice; Johnstone could not be located.

Morrison's account is as follows: She had never discussed with McRobbie her pub application. She stated she learned of the application when she attended a public meeting held at Moberly School on March 25, 1987. McRobbie spoke at this meeting but according to Morrison, McRobbie neither saw nor spoke to her. Subsequently Morrison read the ad in the paper and responded to it. She had experience from her work with telephone numbers and recalled that the number in the classified ad was a Delta phone number. (In fact it was not. Mathisen lived in West End Vancouver.) She left her name and number with the lady who answered the phone. Giordano called her back and told her that all the regular pollsters' positions had been filled but she would be ideal for "call-backs" because she lived so close to the referendum area. (Her residence was several houses outside the boundary.)

Morrison said that Giordano came to her home to interview her and explain her job. He would telephone her and relay a list of addresses and direct her either to deliver ballots or to pick up ballots from each address. Giordano supplied her with the ballots and she occasionally had extra ballots in her home. The ballots which she picked up were all in the pre-addressed envelopes. She kept these envelopes in a large manilla envelope. Giordano and Bauer came to her home every evening to pick up the ballots. She delivered ballots after the May 8 deadline for receipt of OLN cards. She worked almost every evening from the end of April until May 22. She was paid $500.00 in total. She was directed by Giordano to about 10 addresses every evening - at some she delivered ballots and at others she picked up ballots. She did not know how Giordano got these addresses. Johnstone, her son, helped her on only three evenings. Both Morrison and Johnstone had signed declarations that they had no interest in the outcome of the referendum.

Mathisen stated emphatically that she had no knowledge whatsoever of either Morrison and Johnstone or this "call-back" system of Giordano's. Moreover she

mentioned that she had four extra names had any additional pollsters been required.

Giordano's account agrees with Morrison's for the most part. He stated that he had been told by other companies of the need to have someone to do "call-backs" and that was the reason he had hired Morrison before the referendum began. He said that he was not aware she was related to McRobbie. He said that people telephoned him requesting ballots or asking that their ballots be picked up. While he did not mail ballots if the OLN card was received after May 8, he nevertheless had Morrison deliver ballots to certain homes up until May 22. He did not consider this to be unfair as the people who contacted him were "smart enough to phone". He acknowledged that he left ballots with Morrison without any attempt to record their numbers.

e. **Checking and Tabulating of Ballots by DMS (May 23-June 12,1987)**

According to both Bauer and Giordano, the manilla envelopes containing the ballots were first opened

after May 22. First the pollsters' envelopes were opened and those ballots were separated into YES and NO piles. Then the ballots which had been "received by mail" (which included those picked up by Morrison) were similarly divided. There were now four piles of ballots. Bauer began to check each ballot: this was done by cross-checking the name, address and phone number on the ballot against the telephone directory, the "criss-cross" directory, and the pollsters' enumeration sheets. Bauer entered the ballot numbers down the left-hand side of the pollsters' sheets adjacent to the correct addresses. A fifth pile of spoiled ballots developed.

This was a slow process and after two days, Giordano called Mathisen and asked her to come in to provide additional help. After a few more days, this system of verifying ballots was abandoned for two reasons: (1) it was very time-consuming, and (2) it was not definitive: e.g. a married daughter and her husband might be living with her parents and their names would not be in either directory. At the same time the process of checking the names and addresses on the ballots with the entries made by the pollsters on

their enumeration sheets and recording the ballot number adjacent to the appropriate address was stopped.

Subsequently, the ballots were counted. (Mathisen says she did not count; Bauer says she did.) Obviously spoiled ballots (e.g. unsigned, neither or both preferences marked) could be set aside but no system was in place to ensure that ballots were not duplicated or that ballots were returned from addresses actually enumerated. Giordano stated that he "assumed" that Bauer had entered all the ballot numbers on the pollsters' enumeration sheets. This had not been done. Bauer, Mathisen and Giordano all worked on the colour-coded dispersal map. A colored dot (red or green) was placed on the appropriate lot to reflect the preference of the voters at that residence. A number was written on the colored dot to reflect the number of votes of that preference. After reading the address on a ballot, reference would be made to the "master street map" which Mathisen had compiled. When the street address was found, the corresponding lot on the dispersal map was located and the correct color dot applied. All agree this was a time-consuming and frustrating process as the dots

tended to fall off. Bauer stated the process was discontinued before being completed; Giordano's account is that the map was completed. On June 12, 1987, DMS submitted its report and all relevant materials to the Branch for its review.

f. Ombudsman Investigation and Findings

(1) The report submitted by DMS to the Branch states that 14 enumerators were used to poll 12 areas. When first queried why there were 2 more enumerators than areas, Giordano answered that he understood there had been problems with one pollster and she had been replaced and that some of the pollsters may have worked in pairs. Mathisen revealed that she knew nothing of Morrison or Johnstone. Subsequently Giordano described the "call-back" role.

(2) Of the 95 spoiled ballots, 56 were YES, 37 were NO and 2 were unmarked. This was generally consistent with the overall results of the referendum. The percentage of valid YES ballots was reported by DMS to be 60.6%; the percentage

of spoiled YES ballots was 66%. However, on closer examination there were some unusual features about the spoiled ballots. 48 ballots were spoiled because they were out-of-boundary. The majority of these people had not been enumerated by any of the pollsters. Spoiled YES ballots were discovered in the names of Morrison, Johnstone, Morrison's husband and 3 others at Morrison's address which was outside of the referendum area. Indeed, many of the spoiled ballots were from Morrison's neighbourhood. Several people from Morrison's neighbourhood confirmed they had received their ballots from Morrison or her husband.

Two YES ballots were spoiled because they were from non-residents. In addition, 7 YES ballots were spoiled because they were duplicates. The 48 out-of-boundary, 2 non-resident and 7 duplicate ballots total 57. None of these ballots represents the disenfranchisement of an eligible voter (50 were not eligible and 7 had already voted). Of these 57, 47 were YES ballots. Of the remaining 38 spoiled ballots, 2 were unmarked. The 36 ballots remaining ballots

were spoiled for various reasons: unsigned, illegible, preference changed. All these ballots represent the preference of eligible voters. Of these 36, 27 were NO and 9 were YES (i.e. 75% were NO).

95 Spoiled Ballots

48 out of boundary
2 non-residents
7 duplicates

57 no disenfranchisement because not eligible to vote

Of these 57 = 47 YES - 10 NO

95
less 57
38 remaining spoiled ballots from eligible voters
less 2 unmarked
36

Of these 36 = 27 NO - 9 YES

Thirty-one spoiled ballots were from Dave Thomson's area, and were spoiled for the following reasons: 1 unmarked, 4 out-of-boundary, and 26 unsigned. Of the 26 unsigned, 17 were NO and 9 were YES. (i.e. 65.3% of the 26 unsigned ballots were NO). It is evident that the majority of spoiled ballots from eligible voters were NO ballots.

Thomson was hired directly by Giordano. He admitted having missed the training session, and as a result he may not have been certain how to proceed. Review of his enumeration sheets indicated that he had missed 24 houses in his area. How to explain the fact that 65.3% of his spoiled ballots were NO and that 75% of all spoiled ballots from eligible voters were NO? Thomson said that he had not been counselled to purposely spoil NO ballots. A possible explanation is that this ratio may more truly reflect the overall preference of eligible voters within the referendum area at the time the referendum was conducted.

(3) The 5 piles into which DMS had separated the ballots were labelled and sent intact to the Branch. DMS also tabulated the ballot numbers in each pile separately and these were reproduced in an appendix in its report to the Branch. Setting aside the 95 spoiled ballots, 4 piles remained as follows:

	YES	NO	TOTAL
a) Picked up by enumerator	506	536	1042
b) Received by mail	709	254	963

In other words, 48.5% of the ballots picked up by enumerators were YES while 73.6% of the ballots "received by mail" were YES. The 25% discrepancy between the percentage of YES ballots picked up by enumerators and the percentage in the "received by mail" category seemed to be an anomaly.

The 963 ballots in the "received by mail" category included ballots which had been obtained as a result of sending OLN cards, ballots left at residences by the pollsters and subsequently mailed in by the residents, and ballots picked up by Morrison in her "call-back" role.

Both YES and NO ballots "received by mail" were reviewed to determine how many ballots had been obtained as a result of OLN cards (the OLN cards

were stapled to the ballots). Seventy-three OLN cards were found; 5 of these were photocopies of the OLN card rather than the original. In total, 134 ballots were attached to OLN cards. 91 of these were NO ballots; 43 were YES. While a small sample, this percentage of 67.9% NO is also at odds with the overall reported results of the referendum.

In order to compare some of these results against other referendums, this office consulted a company which had been on the Branch's "approved" list since 1984 and has since conducted eight referendums. Using data from three of these, the average percentage of people voting who chose to mail in their ballots was 15.4%. (This includes ballots received as a result of OLN cards.) 15.4% of the 2005 who voted in the Knight Street Pub referendum yields a figure of 309. The reported total of YES and NO ballots "received by mail" is 963, i.e., 48% of all ballots returned.

In the experience of the consulted company, the YES "received by mail" ballots tended to outweigh

the NO "received by mail" ballots by a slight margin, i.e. 2-3%. This company found the discrepancy in the Knight Street Pub referendum (i.e. 48.5% YES by enumerator; 73.6% YES "received by mail") unusual.

In theory, the polling process used by the pollsters during the field work between April 21-27 was complete. If residents were home, the required number of ballots were handed over by the pollster; if no one was home, an OLN card was left and the required number of ballots could be obtained from DMS. Pre-addressed and pre-paid envelopes accompanied the ballots. There was no need for anyone to phone DMS either for ballots or to have ballots picked up. On all 8 referendums conducted by the consulted company, the principal could not recall receiving more than half a dozen telephone calls. The phone number of DMS was not on the ballots and DMS was not listed in the telephone directory at the relevant times. Giordano said that the DMS phone was connected on April 29, 1987, and that the phone number would have been available through directory assistance shortly thereafter.

(4) Each of the 2100 ballots returned was examined by an Ombudsman Officer. This examination led to the discovery of many irregularities, all of which were found in the YES "received by mail" category, as follows:

(a) 9 ballots were found from addresses which did not exist. This was confirmed with the City of Vancouver. The pollster's notation on his enumeration sheet was "3 houses on Knight - No Numbers - Under construction." The pollster had entered "none" on his street map where addresses were to be entered; this notation was reproduced on the master street map. It is important to note that these lots did contain dots on the dispersal map. (Reference would have had to be made to the street map before the correct lot on the dispersal map could be located.)

(b) 13 ballots were returned from one address. There was one ballot in the name of each of the following individuals:

i) Deborah Morrison (First cousin to McRobbie)
ii) Morrison's husband
iii) Vince Johnstone (Morrison's son)
iv) Johnstone's girlfriend
v) Johnstone's friend
vi) McRobbie's and Morrison's grandmother
vii) McRobbie's and Morrison's uncle
viii) McRobbie's and Morrison's first cousin (male)
ix) McRobbie's and Morrison's aunt
x) McRobbie's and Morrison's first cousin (male)
xi) McRobbie's and Morrison's first cousin (female))
xii) McRobbie's mother (Morrison's aunt)
xiii) Morrison's mother (McRobbie's aunt)

(These relationships were established through testimony; they have not been independently verified by our office.)

It is important to note that on May 31, 1988, during the course of the Ministry's investigation, Deputy Minister Doney put the names of all 14 pollsters to McRobbie, including the names of Morrison and Johnstone. In his memo to file dated May 31, 1988 on this conversation, Doney wrote that he asked McRobbie "if any of these individuals was a direct relative of hers or if she knew these people prior to the pub referendum being conducted. She answered no to both questions with regard to all of the pollsters named."

McRobbie's explanation to this office was that Deborah Morrison and Vincent Johnstone were known to her as Debbie Johnstone and Vince Schmidt, respectively, and that she did not recognize them as named by Doney. However, Doney noted in his memo that McRobbie volunteered the information that her cousin, Wendy Martinello (Morrison's sister) was involved in the pre-canvass of the neighbourhood.

It was Morrison's evidence that only two of these people (her grandmother and her uncle) actually reside at this address. Morrison and her husband acknowledged their signatures as did Johnstone's girlfriend. Johnstone's friend maintained that the signature of his name was not his. Neither Morrison, her husband, or the girlfriend could recollect any of the circumstances of their signing the ballots. It is significant to note that the pollster's entry at this address was "not home". Therefore, an OLN card would have been left. None of these 13 ballots was attached to an OLN card. By the process of elimination, it seems

likely that these ballots were part of the "call-back" system.

Giordano stated that every validated ballot would bear the initials of either himself, Bauer, or Mathisen. The initials were an indication that one of these three people had checked the ballot in some manner. The 9 ballots from the non-existent addresses all bear Giordano's initials. The only 5 ballots of all 2005 counted as valid which did not bear any initial were Morrison's, her husband's, Johnstone's, Johnstone's friend's, and Johnstone's girlfriend's, all at Morrison's grandmother's address. Giordano could offer no explanation for this anomaly.

(c) An unsigned YES ballot (picked up by the pollster) which had a notation written on it "Confirmed by CG" and which was counted. The company consulted by this office indicated that it would contact a resident who had omitted to sign a ballot and give him the opportunity to communicate his preference. However, fairness

would demand a consistent approach. There was no notation on any other unsigned ballots which had been spoiled to indicate that any attempt had been made to confirm them. Giordano has stated that he may have confirmed other unsigned ballots, but he cannot remember.

(d) Several instances of duplicated ballots (same name and address). These could have been discovered easily if the system of entering the ballot number against the appropriate address on the pollsters' sheets had not been discontinued.

Upon discovery of all of the above ballots, and others which raised suspicions, the R.C.M.P. and Ministry were contacted. We continued our investigation and conducted several additional interviews. Subsequently, all original documents held by this office were requested by, and handed over to, the R.C.M.P.

It is concluded that the approval of the Knight Street Pub Referendum results by the Branch cannot be supported on the facts. It is recommended that the Branch reconsider its decision approving the referendum.

6. BRANCH REVIEW OF DELTA MEDIA SERVICES REFERENDUM REPORT (June-July 1987)

After tabulating the results of the referendum, DMS sent its report, with appendices, including copies of the pollsters' enumeration sheets, pollsters' declarations, and master tabulation sheets, to the Branch for its review. The ballots and OLN cards were also sent. These were received at the Branch on June 15, 1987. Receipt of the documents was acknowledged by letter to DMS from Hick on June 29. On July 7, McRobbie was informed by letter from Hick that the referendum results had been approved.

A research officer conducted the Branch's review of the referendum materials. He examined the spoiled ballots and counted all the ballots. He found a slight discrepancy in his recount of the ballots which brought the percentage of YES ballots down from 60.6% to 60.49%. He also questioned some of the spoiled NO ballots, but calculated that even if these had been counted, the referendum would still have passed by 60.33%. In his July 6, 1987 memo to Branch management, the research officer referred to the category of YES ballots "received by mail", yet the fact that that category had more ballots than any other did not strike

him as unusual. He also commented that of the 95 spoiled ballots 56 were YES, 37 were NO and 2 had no mark. Of the 56 YES votes, 40 were outside the boundary. He did not see anything unusual in this distribution or in the large number of unsigned spoiled ballots. He concluded his memo by writing that the DMS "report is an absolute model in terms of its comprehensiveness, detail and quality." The Branch contends that the quality of the DMS report was superior to that of other polling companies.

The Branch had a list of guidelines for companies conducting referendums. Two of these guidelines were as follows:

11. When the ballots are being counted, the residents who have voted should be checked off the master enumeration list to avoid any possible duplication.

14. Ballots received as a result of the Out-Left Notice Card should be checked off the master enumeration list in the same manner as other ballots.

As mentioned earlier in this report, when ballots were first being checked at DMS, the serial number of the ballot was entered by Bauer down the left-hand side of the pollsters' enumeration sheets adjacent to the appropriate entry. However, this process had been discontinued. It was evident at a glance that there were nowhere near 2100 such entries. A count by this office revealed that only 1117 entries had been made.

During the interview with the research officer, he was asked why he had not been concerned about the fact that DMS had not complied with the Branch's guidelines. He said that he was not aware of the existence of the guidelines.

The research officer had only been working in the Branch for about 2 months when he reviewed DMS' referendum report. Previously he had been involved in the Branch's review of a referendum conducted in Sardis. (The review was undertaken by the Branch after the receipt of numerous complaints.) It was Branch management's responsibility to ensure that the research officer knew what he was doing. Given Hick's knowledge that, but for a phone call from Poole, DMS would not have been approved to do the

referendum, Hick ought to have ensured that this company complied with the Branch's guidelines. A minimal inquiry would have revealed that the majority of ballots in the YES "received by mail" category had not been entered on the pollsters' enumeration sheets and that the addresses which appeared on many of the ballots had not been enumerated by any of the pollsters.

In these circumstances, it is concluded that the Branch's review of the referendum documents was negligent. Negligence in public administration is the failure to exercise proper care or attention in the performance of a public duty. It is recommended that standard procedures be developed and applied to review all referendum documents effectively and that the Branch ensure that staff have sufficient experience and direction to carry out the task.

7. MINISTRY RESPONSE TO SUBSEQUENT COMPLAINTS

a. Dr. Mangal's 1987 letter (September-October 1987)

The Ministry's 1988 report ("An Investigation into the Referendum for the Knight Street Pub") brought to

light the fact that Dr. Mangal, a resident in the referendum area, had originally complained to the Branch in the fall of 1987. The research officer's recollection was that Mangal had telephoned the Branch in September 1987 and complained about irregularities in the referendum. Mangal wrote a letter to Hick dated September 18, 1987. The letter was date stamped as received on October 23. The original of Mangal's letter was not in the Ministry file and could not be located.

Mangal, in his letter, was specific about the type of irregularities which he was alleging; however, he did not provide any names. He also complained that the dispersal map was inaccurate. He requested that Hick "look into the whole Plebiscite process".

The research officer drafted three alternative responses for Hick's consideration and signature. Two of the letters declined to investigate Mangal's complaints because the applicant had met the Branch's requirements and considerable time had elapsed since the referendum had been held. The third letter, which

is the one Hick signed on October 30, 1987, contained the following two paragraphs:

> Nevertheless, given the seriousness of some of the allegations raised in your letter, I am instructing a further review of this plebiscite. The branch will communicate with you again, either in the course of seeking specific substantiation of those matters raised in your letter, or to relay to you the conclusion of our review.

Mangal did not hear anything further from the Branch until May 1988, after BCTV had confronted the Minister with the allegations.

The position of the Branch (as contained in the Ministry's report) was that "Dr. Mangal was advised to provide specifics before further investigation would be conducted." The research officer stated that to the best of his recollection, he phoned Mangal after Hick's letter and requested specifics from him. As Mangal never provided the specifics, the Branch was unable to conduct its review. However, the research officer acknowledged that he might be mistaken and that his telephone request for more specifics may have been made during his phone conversation with Mangal in September. Mangal's

September 18 letter could have been in response to this request, as Mangal claims. This sequence is supported by the fact that on October 30, the research officer wrote Giordano. He enclosed a copy of Mangal's letter (with Mangal's name whited out) and asked Giordano for a written response. Giordano discussed the matter on the telephone with the research officer but did not comply with the Branch's request for a written response.

When Hick was asked why he had not ensured that the Branch was taking some action after his October 30 letter to Mangal, he responded that his commitment had gone "right out of his head" after he had delegated to the research officer the responsibility to follow up the matter.

Two other letters had been forwarded to the Branch by the City of Vancouver. One letter, alleging that the Branch had ignored certain Regulations when granting pre-clearance to the Knight Street Pub, was received at the Branch on April 21, 1987, and is on the Ministry file. It was not replied to. The other letter, forwarded by the City and received at the

Branch on May 13, 1987, was an anonymous letter raising concerns about Toigo's involvement and DMS. Hick (on May 15, 1987) wrote the Office of the City Clerk that Toigo was closely connected with the Knight Street Pub application as he was president of Whitbury Holdings, the company which owned the property on which the pub would be located. Blind copies of Hick's letter were sent to Toigo, Giordano and David Poole.

In his October 30 response to Mangal, Hick committed the Branch to conduct a review of the referendum and to communicate again with Mangal. Having signed this letter Hick was responsible for ensuring that this review occurred. His personal knowledge of the irregular manner by which DMS had been included on the Ministry's approved list could only have heightened this responsibility. In these circumstances, Hick's failure to ensure follow-up action constitutes negligence, in that he failed to exercise proper care or attention in the exercise of a public duty.

b. Dr. Mangal's and others' 1988 complaints
(the Ministry's Investigation, May-June 1988)

When the public controversy arose in May, 1988 over the conduct of the referendum and the issuance of the licence for the Knight Street Pub, the Minister instructed his deputy, Mr. Lee Doney, to conduct an investigation into the allegations of improprieties. The active investigation work was delegated to Hick, and a lawyer from the Legal Services Branch of the Ministry of Attorney General, was included. (He was released of his solicitor-client privilege by the Ministry so that he could reply to the Ombudsman's questions during the course of this investigation.) Under their leadership, a group of Branch inspectors was involved in making the actual inquiries. Administrative staff from the Ministry correlated and evaluated the investigation results and wrote the report.

The Ministry focused its attention on the complaints which it had received, which totalled 63 by a certain cut-off date. An original list of 29 complaints had been provided by Dr. Mangal to BCTV. He subsequently

submitted an additional list of people alleging irregularities in the referendum. Only 4 of these 63 were from people who had voted YES and their complaints were the same as others: no ballots or OLN cards, or not enough ballots, had been received. 26 of the complaints could be rejected outright as ballots from the residents were found. In the majority of the remaining complaints, the testimony of the residents was in contradiction to the "standard operating procedure" of the pollsters (i.e. that if no one was home an OLN card would be left). The Ministry termed these complaints "unverifiable". Allegations from only 3 households were accepted. One allegation of forgery was referred to the Ministry of Attorney General. The Ministry concluded that the magnitude of error was not large enough to warrant overturning the referendum.

This office has found nothing in its investigation of the referendum process to indicate that during the field work any of the pollsters selectively missed houses, the residents of which were somehow known to be opposed to the pub, or that there was any intentional effort to leave fewer than the required

number of ballots. As a result, this office does not take issue with the Branch's disposition of the 63 allegations.

Each of the 63 complaint files has been reviewed by this office leading to the following observations. In order for Ministry staff to investigate each of the complaints, it was necessary to review the referendum material: the pollsters' enumeration sheets, OLN cards, and ballots. The Ministry has explained that it maintained a purposefully narrow focus. Any anomalies not directly relevant to the 63 allegations were not noticed or at least were not mentioned in its report. For example: (case 46) a resident complained that she had not received any voting material. The Ministry in its report commented that the pollster's enumeration sheet contained a name and a telephone number at the resident's address and therefore the resident had been left a ballot. The conclusion on the investigation file was that the allegation was unsubstantiated; the report concluded the complaint was unverifiable. However, on the left-hand side of the pollster's sheet adjacent to this resident's

address was the clear entry of a ballot number, indicating that a ballot had actually been received at DMS from this resident. This office could not locate this ballot. No mention of this missing ballot was made in the Ministry report, or in the investigation file.

When the research officer was interviewed, he was asked if he understood what the numbers entered down the left-hand side of the pollsters' sheets represented. He replied that he did not. It seemed plausible that the Ministry had not mentioned the missing ballot because no one there had understood the purpose of the numbers on the left-hand side of the pollsters' sheets, and therefore no one had realized there was a missing ballot.

During the course of the Ministry's investigation, the research officer had written a six-page draft (entitled "Contextual Considerations in Interpreting the Findings of the Ministry Review of the Knight Street Referendum"), which had not been included in the Ministry's report. There were two references in this draft to the notation of ballot numbers on the

pollsters' control sheets during the counting and collation stage at DMS. When questioned about the discrepancy between his prior answer (that he did not know what the numbers represented) and the content of his draft, the research officer replied that he had forgotten what the numbers were. His draft also clearly referred to the missing ballot of complaint 46: "This review found only one ballot number recorded against a control sheet for which the actual ballot was not found." His draft seemed to indicate that the Branch had taken a much closer look at the referendum process than his prior account to us indicated. For some reason the Ministry decided not to include the information about the missing ballot in its report.

In the above discussion of the research officer's role throughout, it should be noted that he was apparently working under the severe disadvantage of minimal experience and inadequate direction.

Two of the complaints (Mangal's and case 29) concerned the inaccuracy of the dispersal map. Case 29 said she had not voted and yet the dispersal

map had shown 6 YES votes at her house. Mangal complained that the dispersal map incorrectly showed YES votes at his address. The Ministry's disposition of these complaints concerning the dispersal map was that the allegation was not material to the conduct or the outcome of the referendum. The map had been prepared by the referendum company "to show the dispersion of the voting pattern, not to show the specifics of the vote." (p.13). The question which remains unanswered is how a map could show an accurate dispersion without showing the specifics of the vote? And if the map did not show an accurate dispersion, what purpose did it serve? This dispersal map, although not always mandatory, was required by Andersen in this case due to his concern over the inexperience of DMS.

The Ministry focused a great deal of its attention on pollster Thomson and his poor performance. Ministry staff stated that his route had been retraced three times during the course of their investigation. The Ministry's report states that "this identified 17 additional residences that may have been missed". A review of Thomson's enumeration sheets and street map

by an Ombudsman Officer revealed that 24 houses had been missed. This matter was discussed with Thomson during his interview.

When Thomson had been interviewed by the Ministry, both Giordano and Bauer were permitted to be present. This office asked the Ministry lawyer why he had not advised against this. He stated that he had not been consulted. He only learned of the interview arrangement after the fact. An obvious follow-up to confirm Thomson's account of his hiring and training would have been an interview with Mathisen. Such an interview was scheduled, then cancelled at the last minute. This was a surprising omission as it should have been clear to the Ministry that Mathisen would have critical information.

Given the fact that Ministry staff understood that the ballot numbers down the left-hand side of the pollsters' enumeration sheets were entered at DMS during the counting and collation of ballots, and that it was obvious that nowhere near all 2005 ballot numbers had been so entered (only 1117 had been

entered), why did the Ministry include the following statement in its report (p. 20)?

> Delta Media Services, on receiving completed ballots, recorded the number of the ballot adjacent to the enumerated address on the control sheets.

Reference was made on page 43 of this report to McRobbie's responses to Doney's questions to her concerning her relationship to or knowledge of any of the pollsters. No doubt if her answer had been different, the Ministry's investigation would have taken a different tack. It is recognized that the purpose of the Ministry's review was to investigate specific allegations, which it did. While this office may agree with the substance of the majority of the Ministry's conclusions vis-a-vis the 63 allegations it cannot commend the process by which those conclusions were reached. The Ministry's investigation was inadequate and too narrowly focused; irregularities were either not noticed or not questioned.

The Ministry's explanation that its mandate was restricted to the investigation of the 63 allegations

cannot be accepted. The Ministry's responsibility was broader than simply verifying or rejecting allegations. The Ministry's conclusion that complaints from only 3 households were verified amounted to the Ministry putting its stamp of approval on both the process and the results of the referendum. Yet the Ministry had narrowly focused its attention on the 63 allegations, without noticing or mentioning any other aspect of the referendum process. The Ministry stated in its report (p.27) that "the methodology of the referendum company...was adequate." The clear implication in this statement is that the methodology was investigated and found to be adequate.

It was the inherent responsibility of the Ministry to be thorough and exacting in the investigation of complaints concerning its past administrative actions. In these circumstances, it is concluded that the Ministry failed to meet this standard.

Regarding the whole of this Section, it is recommended that the Branch develop and apply standard procedures to ensure the timely and effective investigation and resolution of complaints.

8. BRANCH GUIDELINES FOR FUTURE REFERENDUMS

Section 10(3.1) of the Liquor Control and Licensing Act reads as follows: "A referendum may be carried out in a manner required by the general manager". The guidelines in effect during the Knight Street Pub referendum had been prepared in 1980. These represented a significant advance from the previous process whereby the licence applicants conducted their own polls. The development of standard guidelines represented a formalization of the referendum process, and the public expectation was created that it would constitute an independent and fair public vote. It is apparent that in the Knight Street referendum, this expectation was not met.

In the late summer and early fall of 1987, the General Manager began an initiative to codify the Branch's requirements to ensure uniformity and minimum standards in the conduct of referendums. This initiative has resulted in the release in July 1988 of the Branch's draft "Manual for the Conduct of Referendums". Although some of the new guidelines have been implemented, they have not been publicly released in their entirety.

Development of these guidelines is a positive approach for which the Branch is to be commended. It is the opinion of this office that the guidelines could be further improved by taking into account the following considerations:

- of prime importance is the development by the Branch of a list of relevant criteria against which to evaluate a company which wishes to conduct a referendum;

- once a company meets those criteria and is acceptable to the Branch, then (providing there is no conflict of interest with the particular application) the applicant should be free to engage the company of its choice;

- the Branch should state explicitly that any involvement of a company with any aspect of the applicant's pre-referendum campaign (i.e. precanvass survey) would render that company ineligible to conduct the actual referendum;

- the applicant in its pre-referendum campaign material should be required to include

information about the dates during which the official referendum will be held and an explanation of the limited purpose of the pre-referendum campaign. Such information may help the residents to distinguish between the pre-referendum campaign and the official referendum;

- the Branch must ensure that the materials used by companies are such that the referendum process can be reconstructed and the results verified. Both OLN cards and ballots should be numbered - ideally with the same number. There appears to be a distinct advantage to require companies to use the same forms. While there may be a financial cost to some companies, it is suggested that the Branch phase-in a requirement that all companies use standardized materials.

The key to ensuring well-done, independent and impartial referendums is that the companies approved by the Branch be companies of good reputation with a proven track record. If this is the case, there will be no need for the Branch to involve itself in such things as training of

the pollsters or the opening of, or tabulation of ballots. If the Branch makes its requirements known to the polling companies, it then becomes their responsibility to adhere to those requirements. Poor performance should result in the removal of the company from the Branch's approved list.

Following from the above discussion, it is recommended that:

1. the Branch develop a list of criteria against which to evaluate a company requesting Branch approval to conduct a referendum;

2. the applicant engage the company of its choice from the approved list, providing the company meets all other Branch guidelines;

3. the Branch require the applicant include in its pre-referendum campaign material information about the dates of the official referendum and an explanation of the difference between the pre-referendum campaign and the official referendum;

4. the Branch phase-in a requirement that all companies use standardized material.

9. SUMMARY OF RECOMMENDATIONS

1. It is recommended that Branch practices for considering competing applications within a particular area be clarified, made known to the applicants and consistently applied.

2. It is recommended that, in the exercise of administrative responsibilities, the General Manager not allow himself to be influenced by political considerations.

3. It is recommended that the Branch reconsider its decision approving the referendum.

4. It is recommended that the Branch develop and apply standard procedures to review all referendum documents effectively and that the Branch ensure that staff have sufficient experience and direction to carry out the task.

5. It is recommended that the Branch develop and apply standard procedures to ensure the timely and effective investigation and resolution of complaints.

6. It is recommended that:

a) the Branch develop a list of criteria against which to evaluate a company requesting Branch approval to conduct a referendum;

b) the applicant engage the company of its choice from the approved list providing the company meets all other Branch guidelines;

c) the Branch require the applicant include in its pre-referendum campaign material information about the dates of the official referendum and an explanation of the difference between the pre-referendum campaign and the official referendum;

d) the Branch phase-in a requirement that all companies use standardized material.

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